



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

US EPA RECORDS CENTER REGION 5



452194

REPLY TO THE ATTENTION OF:

C-14J

March 25, 2002

**Via Certified Mail**

**Return Receipt Requested**

Kathy McCleskey Robb  
Hunton & Williams  
200 Park Ave.  
43<sup>rd</sup> Floor  
New York, N.Y. 10166-1128

Re: Request for Information Pursuant to Section 104(e) of CERCLA  
for Allied Paper/Portage Creek/Kalamazoo River Superfund Site in  
Kalamazoo and Allegan Counties, Michigan

Dear Ms. Robb:

As you know, the U.S. Environmental Protection Agency (U.S. EPA or Agency) recently assumed the enforcement lead for various operable units of the Allied Paper/Portage Creek/Kalamazoo River Superfund Site (the Site), which is located in Kalamazoo and Allegan Counties, Michigan. Accordingly, the Agency has begun to supplement the investigation of the contamination at the Site conducted to date by the Michigan Department of Environmental Quality. U.S. EPA believes that the following parties may have information that is relevant to this investigation: Plainwell Inc., Milprint, Inc., the Chesapeake Corporation, Philip Morris Industrial, Inc., Simpson Paper Company, the Simpson Plainwell Paper Company, the Plainwell Paper Co., Inc., Plainwell Holding Company, Plainwell Paper Company, and Plainwell Holding Company. The Agency believes that you represent these companies (collectively referred to herein as "Plainwell") with regard to response activities at the Site.

The Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.* (CERCLA) gives U.S. EPA the authority to: 1) assess contaminated sites, 2) determine the threats to human health and the environment posed by a site, and 3) clean up those sites.

Under § 104(e)(2) of CERCLA, U.S. EPA has authority to gather information and to require persons to furnish information or documents relating to:

A. The identification, nature, and quantity of materials which have been or are generated, treated, stored or disposed of at a vessel or facility or transported to a vessel or facility;

B. The nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at/or from a vessel or facility;

C. The ability of responsible parties to pay the costs of the clean up.

U.S. EPA asks that Plainwell provide information and documents relating to the contamination of the Site. Please ask Plainwell to respond completely and truthfully to this Information Request and its questions in Attachment 1 within 10 days of your receipt of this letter. Instructions for completion of this response (including an instruction about the appropriateness of a consolidated response) are in Attachment 2; definitions of terms used in this Information Request and its questions are in Attachment 3. Unless otherwise defined, all terms used in the Information Request have the same meaning ascribed to them in CERCLA or the National Oil and Hazardous Substances Pollution Contingency Plan.

U.S. EPA recognizes that Plainwell has already provided a substantial amount of information to the Agency, to the United States Department of Justice and to the United States Department of the Interior in connection with the bankruptcies of Plainwell Inc. and Plainwell Holding Company. If the information already submitted by Plainwell in connection with the bankruptcies is responsive to these Requests, Plainwell should so state in its response. In its answer to each Request, Plainwell should identify with particularity those documents which it believes are responsive to that Request. If, however, Plainwell has additional information or documents responsive to any of the Requests, it should supplement what has already been submitted with such additional information and/or documents.

Plainwell may consider some of the requested information to be confidential. If Plainwell wishes to assert a privilege of business confidentiality, it must nevertheless respond to the question and advise U.S. EPA that it requests that the Agency treat the response as confidential business information. Directions to assert a claim of business confidentiality are in Attachment 4.

Compliance with this Information Request is mandatory. Failure to respond fully and truthfully to each question within this Information Request and within the prescribed time frame can result in an enforcement action by U.S. EPA pursuant to § 104(e)(5) of CERCLA. Failure to respond and failure to justify the non-response can result in similar penalties under this Section. Further, § 104(e)(5) authorizes the United States to seek penalties from a federal court of up to twenty-five thousand dollars (\$25,000) for each day of continued non-compliance. U.S. EPA considers non-compliance to be not only failure to respond to the Information Request, but also failure to respond completely and truthfully to each question in the Information Request.

The provision of false, fictitious or fraudulent statements or misrepresentations may subject Plainwell to criminal penalties of up to ten thousand dollars (\$10,000) or up to five (5) years imprisonment, or both, under 18 U.S.C. 1001.

U.S. EPA has the authority to use the information requested in an administrative, civil, or criminal action.

This Information Request is not subject to the approval requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

Return your response to U.S. EPA within 10 days of your receipt of this Information Request.  
Mail your response to:

Shari Kolak  
Remedial Project Manager  
U.S. Environmental Protection Agency SR-6J  
77 W. Jackson Blvd.  
Chicago, IL 60604

We appreciate your effort to respond fully and promptly to this Information Request. If you have any questions about this Information Request, please call either Eileen L. Furey, Associate Regional Counsel at (312) 886-7950 or Shari Kolak at (312) 886-6151.



107 Bertram C. Frey  
Acting Regional Counsel  
U.S. EPA - Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

Attachment:

1. Requests
2. Instructions
3. Definitions
4. Confidential Business Information

cc: Shari Kolak, USEPA  
Eileen Furey, USEPA  
Doug Ballotti, USEPA  
Renita Ford, USDOJ  
Mary-Lynn Taylor, USDOJ

## Attachment 1

### INFORMATION REQUESTS

1. Identify all persons consulted in the preparation of the answers to these Information Requests.
2. Identify all documents consulted, examined, or referred to in the preparation of the answers to these Requests, and provide copies of all such documents.
3. If you have reason to believe that there may be persons able to provide a more detailed or complete response to any Information Request or who may be able to provide additional responsive documents, identify such persons.
4. Identify all current and prior owners of the Site or any portion thereof. For each such owner or prior owner, further identify:
  - a) the property owned;
  - b) the dates of ownership;
  - c) all evidence showing that the owner controls or controlled access to any portion of the Site; and
  - d) all evidence that a hazardous substance, pollutant, or contaminant, was released or threatened to be released at or from the owner's property during the period of its ownership.
5. Identify all current and prior operators, including lessors, of the Site or any portion thereof. For each such operator, further identify:
  - a) the property at which it conducts or conducted operations;
  - b) the dates of operation;
  - c) the nature of the operator's operations;
  - d) all evidence that the operator controls or controlled access to the Site or any portion thereof; and
  - e) all evidence that a hazardous substance, pollutant, or contaminant was released or threatened to be released at or from the portion of the Site at which the operator conducts or conducted operations.
6. Identify each source or potential source of the release of hazardous substances, pollutants, or contaminants (e.g. polychlorinated biphenyls or "PCBs") from the Plainwell paper mill property in Plainwell, Michigan (the "Plainwell paper mill") including, without limitation:
  - a) discharges of total suspended solids ("TSS") in wastewater;
  - b) erosion from waste disposal areas located at the Plainwell paper mill, or owned and operated by you for the disposal of wastes generated at the mill property (e.g. the 12<sup>th</sup> Street Landfill);
  - c) exceedances of TSS loading limits established by the State of Michigan and/or EPA;

- d) dewatering lagoon areas located at the Plainwell paper mill;
  - e) storm sewer leaks and discharges;
  - f) sewer line leaks and discharges; and
  - g) machine, transformer or other equipment leaks and discharges.
- 7. Identify any data or other information regarding the nature and quantity of hazardous substances released from each source or potential source you identified in response to Request #6, above.
- 8. Identify any data or other information regarding the history of flooding from the Kalamazoo River at the Plainwell paper mill or at the 12<sup>th</sup> Street Landfill.
- 9. Provide any studies conducted by Williams & Works, Inc., or by any other person, regarding: (1) the closure of sludge lagoons located at the Plainwell paper mill; (2) the closure of the 12<sup>th</sup> Street Landfill; or (3) potential erosion of waste materials from the sludge lagoons, the 12<sup>th</sup> Street Landfill, or from any other area of contamination at the Plainwell paper mill into the Kalamazoo River.
- 10. Identify the acts or omissions of any person that may have caused the release or threat of release of hazardous substances, pollutants, or contaminants (e.g. PCBs) at or from the Site.
- 11. Identify any data regarding the nature and quantity of hazardous substances released as the result of the acts or omissions identified by you in response to Request #10, above.
- 12. Identify all persons who you believe may have knowledge or information about the generation, transportation, treatment, disposal or other handling of waste materials, including hazardous substances, at the Site.
- 13. Identify all persons who may have arranged for disposal or treatment, or arranged for transportation for disposal or treatment, of waste materials, including hazardous substances, at the Site. In addition, identify the following:
  - a) The waste material or hazardous substance, including the chemical content, characteristics, physical state (e.g., solid, liquid), and the process for which the substance was used or the process which generated the substance;
  - b) The quantity of the waste materials or hazardous substances involved (weight or volume); and
  - c) All tests, analyses, and analytical results concerning the waste materials.
- 14. Do you have any insurance coverage that may in whole or in part cover any of the costs to conduct any cleanup, remediation or other action to address contamination at the

Plainwell paper mill or elsewhere at the Site? If yes, state the name of all entities and persons insured, the name and address of the insurance carrier(s), and identify and provide a copy of all such policies.

15. Do you have any agreement, other than those identified in response to Request #14, above, with any person pursuant to which that person, or any other person, agrees to cover in whole or in part any of the costs to conduct any cleanup, remediation or other action to address contamination at the Plainwell paper mill or elsewhere at the Site? If yes, identify all parties to such agreement(s), and provide a copy of all such agreements.
16. Have you incurred any costs associated with the cleanup, remediation or other action to address contamination at the Site or any portion thereof? If yes, identify all costs incurred by you through the date of this Request.

## Attachment 2

### INSTRUCTIONS

1. Each party identified in the definition of "you" in Attachment 3, or its successor in interest, has an independent obligation to respond to these Information Requests. If the answer to any Request, however, is identical for all parties, then U.S. EPA will accept a consolidated response. To the extent that any individual party has information different from that supplied by any other party, however, separate responses should be submitted.
2. Precede each answer with the number of the question to which it corresponds.
3. In answering each question, identify all persons and contributing sources of information.
4. Although the U.S. EPA seeks your cooperation in this investigation, CERCLA requires that you respond fully and truthfully to this Information Request. False, fictitious, or fraudulent statements or misrepresentations may subject you to civil or criminal penalties under federal law. Section 104 of CERCLA, 42 U.S.C. Section 9604, authorizes the U.S. EPA to pursue penalties for failure to comply with that Section, or for failure to respond adequately to requests for submissions of required information.
5. You must supplement your response to U.S. EPA if, after submission of your response, additional information should later become known or available. Should you find at any time after the submission of your response that any portion of the submitted information is false or misrepresents the truth, you must notify U.S. EPA as soon as possible.
6. For any document submitted in response to a question, indicate the number of the question to which it responds.
7. You must respond to each question based upon all information and documents in your possession or control, or in the possession or control of your current or former employees, agents, contractors, or attorneys. Information must be furnished regardless of whether or not it is based on your personal knowledge, and regardless of source.
8. Your response must be accompanied by the following statement, or one that is substantially equivalent:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted.

Based upon my inquiry of the person or persons who manage the

system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

The individual who prepared the response or the responsible corporate official acting on behalf of the corporation must sign and date the statement, affidavit, or certification. Include the corporate official's full title.

9. If any of the requested documents have been transferred to others or have otherwise been disposed of, identify each document, the person to whom it was transferred, describe the circumstances surrounding the transfer or disposition, and state the date of the transfer or disposition.
10. All requested information must be provided notwithstanding its possible characterization as confidential information or trade secrets. If desired, you may assert a business confidentiality claim by means of the procedures described in Attachment 4.



### Attachment 3

#### Definitions

1. As used in this letter, words in the singular also include the plural and words in the masculine gender also include the feminine and vice versa.
2. The term *you* as used in the Information Requests shall mean, individually, Plainwell Inc., Milprint, Inc., Chesapeake Corporation, Philip Morris Industrial, Inc., Simpson Paper Company, Simpson Plainwell Paper Company, Plainwell Paper Co., Inc., Plainwell Holding Company, Plainwell Paper Company, and Plainwell Holding Company. See Instruction #1, however, for details on responding to the Requests in a consolidated manner.
3. The term *person* as used herein includes, in the plural as well as the singular, any natural person, firm, contractor, unincorporated association, partnership, corporation, trust or governmental entity, unless the context indicates otherwise.
4. *The Site* referenced in these documents shall mean the Allied Paper/Portage Creek/Kalamazoo River Superfund Site located in Kalamazoo and Allegan Counties, Michigan.
5. The term *hazardous substance* shall have the same definition as that contained in Section 101(14) of CERCLA, including any mixtures of such hazardous substances with any other substances, including petroleum products.
6. The term, *pollutant* or *contaminant*, shall have the same definition as that contained in Section 101(33) of CERCLA, and includes any mixtures of such pollutants and contaminants with any other substances.
7. The term *release* shall have the same definition as that contained in Section 101(22) of CERCLA, and means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance, pollutant, or contaminant.
8. The term *identify* means, with respect to a natural person, to set forth the person's full name, present or last known business address and business telephone number, present or last known home address and home telephone number, and present or last known job title, position or business.
9. The term *identify* means, with respect to a corporation, partnership, business trust or other association or business entity (including a sole proprietorship), to set forth its full name, address, legal form (e.g., corporation, partnership, etc.), organization, if any, and a brief description of its business.
10. The term *identify* means, with respect to a document, to provide its customary business

description, its date, its number, if any (invoice or purchase order number), the identity of the author, addressor, addressee and/or recipient, and the substance or the subject matter.

11. All terms not defined herein shall have their ordinary meaning, unless such terms are defined in CERCLA, RCRA, 40 C.F.R. Part 300 or 40 C.F.R. Part 260-280, in which case, the statutory or regulatory definitions shall apply.

## Attachment 4

### CONFIDENTIAL BUSINESS INFORMATION

You may consider some of the information confidential that the U.S. Environmental Protection Agency (U.S. EPA or Agency) is requesting. You cannot withhold information or records upon that basis. The regulations at 40 C.F.R. Part 2, Section 200 *et seq.* require that the U.S. EPA afford you the opportunity to substantiate your claim of confidentiality before the Agency makes a final determination on the confidentiality of the information.

You may assert a business confidentiality claim covering part or all of the information requested, in the manner described by 40 C.F.R. 2.203(b). Information covered by such a claim will be disclosed by the U.S. EPA only to the extent and only by means of the procedures set forth in 40 C.F.R. Part 2, Subpart B. (See 41 Federal Register 36902 *et seq.* (September 1, 1976); 43 Federal Register 4000 *et seq.* (December 18, 1985).) If no such claim accompanies the information when the U.S. EPA receives it, the information may be made available to the public by the Agency without further notice to you. Please read carefully these cited regulations, together with the standards set forth in Section 104(e)(7) of Comprehensive Environmental Response Compensation Liability Act (CERCLA), because, as stated in Section 104(e)(7) (ii), certain categories of information are not properly the subject of a claim of confidential business information.

If you wish the U.S. EPA to treat the information or record as "confidential", you must advise the U.S. EPA of that fact by following the procedures described below, including the requirement for supporting your claim of confidentiality. To assert a claim of confidentiality, you must specify which portions of the information or documents you consider confidential. Please identify the information or document that you consider confidential by page, paragraph, and sentence. You must make a separate assertion of confidentiality for each response and each document that you consider confidential. Submit the portion of the response that you consider confidential in a separate, sealed envelope. Mark the envelope "confidential", and identify the number of the question to which it is the response.

For each assertion of confidentiality, identify:

1. The period of time for which you request that the Agency consider the information confidential, e.g., until a specific date or until the occurrence of a specific event;
2. The measures that you have taken to guard against disclosure of the information to others;
3. The extent to which the information has already been disclosed to others and the precautions that you have taken to ensure that no further disclosure occurs;
4. Whether the U.S. EPA or other federal agency has made a pertinent determination on the confidentiality of the information or document. If an agency has made such a determination, enclose a copy of that determination;

5. Whether disclosure of the information or document would be likely to result in substantial harmful effects to your competitive position. If you believe such harm would result from any disclosure, explain the nature of the harmful effects, why the harm should be viewed as substantial, and the causal relationship between disclosure and the harmful effect. Include a description of how a competitor would use the information;

6. Whether you assert that the information is voluntarily submitted as defined by 40 C.F.R. 2.201(I). If you make this assertion, explain how the disclosure would tend to lessen the ability of the U.S. EPA to obtain similar information in the future;

7. Any other information that you deem relevant to a determination of confidentiality.

Please note that pursuant to 40 C.F.R. 2.208(e), the burden of substantiating confidentiality rests with you. The U.S. EPA will give little or no weight to conclusory allegations. If you believe that facts and documents necessary to substantiate confidentiality are themselves confidential, please identify them as such so that the U.S. EPA may maintain their confidentiality pursuant to 40 C.F.R. 2.205(c). If you do not identify this information and documents as "confidential", your comments will be available to the public without further notice to you.